

DAF
C/M
NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
EDWIN NUNEZ,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.
-----X

MEMORANDUM & ORDER
05-CV-2012(ERK)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 30 2005 ★

Korman, Ch. J.

P.M. _____
TIME A.M. _____

The petition for a writ of habeas corpus pursuant to 28 U.S.C. 2255 is his second successive petition.

The first petition was denied on September 11, 2002. A copy of the M&O is attached. While the petition must be transferred to the Court of Appeals, I note that petitioner's Booker claim is not retroactive. Guzman v. United States, 404 F.3d 139 (2d Cir. 2005).

The petition is transferred to the Court of Appeals for the Second Circuit.

SO ORDERED:

Brooklyn, New York
June 23, 2005

____s/Edward R. Korman____
Edward R. Korman
United States Chief District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

EDWIN NUNEZ,

Petitioner,

-against-

MEMORANDUM AND ORDER
CV-00-4179 (ERK)

UNITED STATES OF AMERICA,

Respondent.

----- X

Korman, Ch. J.,

The petition is denied for each of the four reasons stated in the letter of the United States Attorney filed in opposition. See also United States v. Malcolm, 432 F.2d 809, 813 (2d Cir. 1970) (rejecting a challenge to a guilty plea because “the claim rests on nothing but Malcolm’s bald conclusion allegation which is refuted by the record”).

SO ORDERED:

Brooklyn, New York
September 11, 2002

Edward R. Korman
United States Chief District Judge